

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CHRISTOPHER HIRAM CANO, :
: Plaintiff, : 22-CV-10557 (JLR) (OTW)
: :
: -against- : **ORDER**
: :
CITY OF NEW YORK, et al., :
: Defendants. :
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ONA T. WANG, United States Magistrate Judge:

On November 14, 2023, following a telephonic initial case management conference, the Court issued an Order (ECF 37), directing *pro se* incarcerated Plaintiff to file or refile her¹ motions² by December 22, 2023, and to respond to Defendants' motion to dismiss (ECF 31), by January 19, 2024. I stayed discovery pending resolution of these motions. (ECF 37).

Plaintiff filed her motions on November 28, 2023, at ECF Nos. 39 and 40.

1. Plaintiff's Motions Regarding Terminated Defendant Ilya Kharkover

Judge Rochon dismissed Plaintiff's claims against Bronx County Assistant District Attorney Ilya Kharkover ("Kharkover") in a February 15, 2023 Order finding that Kharkover was entitled to absolute immunity. (ECF 6 at 2–3). Judge Rochon found that "Plaintiff's claims against Kharkover are based on actions within the scope of Kharkover's official duties as an assistant district attorney and associated with the conduct of a potential trial" and because Plaintiff's claims "seek monetary relief against a defendant who is immune from such relief,

¹ Plaintiff has previously expressed her gender to be female.

² At the initial conference, *pro se* Plaintiff said she had already made, and/or sought to make, several motions in this case.

28 U.S.C. § 1915(e)(2)(b)(iii), and, consequently, [are] frivolous, 28 U.S.C. § 1915(e)(2)(B)(i)."

Id. Plaintiff has filed at least two motions seeking to have Kharkover reinstated in this case:

(1) a motion for reconsideration under Fed. R. Civ. P. 60, and (2) a motion to compel joinder pursuant to Fed. R. Civ. P. 19(a)(2) and 21. See ECF 39 at 1; ECF 40 at 1–9.³

Plaintiff's motion for reconsideration, although addressed to both Judge Rochon and me, must be decided by the judge who rendered the original judgment, here Judge Rochon. After Judge Rochon has addressed the motion for reconsideration of her order (ECF 6), I will address the motion to compel joinder in a separate Report and Recommendation to Judge Rochon.

2. Defendants' Motion to Dismiss and Plaintiff's Request to Supplement her Complaint.

On January 30, 2023, Defendants filed a letter stating that Plaintiff had failed to file her opposition to Defendants' motion to dismiss, and requested the Court consider the motion to dismiss to be unopposed. (ECF 41). Plaintiff was not copied on ECF 41 and it is not clear whether defense counsel served Plaintiff. The Court notes that Plaintiff is incarcerated and does not have access to electronic filing. **Future filings and motions that do not clearly show they were served on pro se Plaintiff may be stricken.** In any event, Defendants' letter request to consider their motion to dismiss to be unopposed is **DENIED without prejudice to renewal.**

Plaintiff appears to also be seeking to supplement her complaint. (See ECF 39 at 1

³ ECF 40 sets out Plaintiff's Motion to Compel Joinder of Ilya Kharkover, dated August 23, 2023, *id.* at 1–4, as well as a Motion for Reconsideration to reinstate the claims made against Kharkover, dated July 24, 2023, *id.* at 5–7, an accompanying affirmation in support of the motion for reconsideration, *id.* at 8–9, and an Exhibit Z titled "PRIMA FACIE EVIDENCE." *Id.* at 10–13.

(notifying the Court of her intention to file a “Motion for a Supplemental Pleading”)).

Plaintiff is directed to file her proposed supplement to her complaint, together with her opposition to Defendants’ motion to dismiss (ECF 31) **no later than Friday, May 24, 2024.**

Failure to do so may result in the Court deeming: (1) the motion to dismiss unopposed, and (2) Plaintiff’s motion to supplement her complaint withdrawn.

The Clerk of Court is respectfully directed to serve a copy of this Order on *pro se* incarcerated Plaintiff.

SO ORDERED.

Dated: April 26, 2024
New York, New York

/s/ Ona T. Wang
Ona T. Wang
United States Magistrate Judge